

## CHAPTER 1202 PLANNING COMMISSION

### **CROSS REFERENCES**

Municipal planning commissions - see M.C.L.A. Secs. ~~125.31~~ 125.3811 et seq.

~~Department of Planning~~—see ADM. Ch. 242

~~Planning and~~ Community Development Department - see ADM. Ch. 254

Downtown Development Authority - see ADM. Ch. 276

Battle Creek Unlimited Development Review Board - see ADM. Ch. 284

Authority of Planning Commission - see P. & Z. 1212.01

### **1202.01 ESTABLISHMENT; POWERS AND DUTIES.**

The City Planning Commission, heretofore created in accordance with Act 285 of the Public Acts of 1931, State of Michigan, as amended, is hereby continued pursuant to MCL 125.3881(3). The Commission shall have all of the powers and shall be charged with all of the duties set forth in Act ~~28533~~ of the Public Acts of ~~1931~~2008, as amended. The Commission shall further have all the powers and duties now or hereafter conferred upon such commissions by the law of the State.

(Ord. 36-84. Passed 12-18-84.)

### **1202.02 MEMBERSHIP; COMPENSATION; OTHER OFFICES.**

Sec. 1. The Planning Commission shall consist of nine members appointed by the Mayor, subject to the approval, by a majority vote, of the members of the City Commission elected and serving. Members may include the City Manager or a person designated by the City Manager, if any, the Mayor and one or more members of the City Commission, or any combination thereof, as ex officio members; however, not more than one-third of the members of the Planning Commission may be ex officio members. Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the Planning Commission. [MCL 125.3815 (1), (2) and (5).]

Sec. 2. The term of an ex officio member of a Planning Commission shall be as follows:

(a) The term of a Mayor shall correspond to his or her term as Mayor.

(b) The term of a City Manager shall expire with the term of the Mayor that appointed him or her as City Manager.

(c) The term of a member of the City Commission shall expire with his or her term on the City Commission.

[MCL 125.3815 (5)(a), (b), and (c)]

Sec. 3. Members of the Planning Commission other than ex officio members shall be appointed for three year terms or until his or her successor takes office. [MCL 125.3815 (2).]

Sec. 4. The membership of a Planning Commission shall be representative of important segments of the community, such as the economic, governmental, education, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry and commerce. The membership shall also be representative of the entire geography of the local unit of government to the extent practicable. [MCL 125.3815 (3).]

Sec. 5. Members of a Planning Commission shall be qualified electors of the local unit, except that one Planning Commission member may be an individual who is not a qualified elector of the City. [MCL 125.3815 (4)(c).]

### **1202.02 MEMBERSHIP; COMPENSATION; OTHER OFFICES.**

~~—The Planning Commission shall consist of the Mayor and one member of the City Commission to be selected by it, as ex officio members, and seven persons who shall be appointed by the Mayor, subject to the approval, by a majority vote, of the members—elect of the City Commission. Members of the Planning Commission shall serve as such without compensation and the appointed members shall hold no other Municipal office, except that one of such appointed members may be a member of the Zoning Board of Appeals. The terms of ex officio members shall correspond to their respective official tenures. The term of each appointed member shall be three years or until his or her successor takes office.~~



(Ord. 36-84. Passed 12-18-84.)

### **1202.03 REMOVAL OF MEMBERS; CONFLICT OF INTEREST.**

(a) The City CommissionMembers of the Planning Commission, may, after a public hearing, be removed by the Mayor a member of the Planning Commission for misfeasance, inefficiency, neglect of duty or malfeasance, or nonfeasance in office, upon written charges and after a public hearing.

(b) Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Planning Commission. The member is disqualified from voting on the matter if so provided by the bylaws or a majority vote of the remaining members of the Planning Commission.

(c) Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office.

(d) The Planning Commission shall define conflict of interest in its bylaws. [MCL 125.3815 (9).]

(Ord. 36-84. Passed 12-18-84.)

### **1202.04 VACANCIES.**

Vacancies occurring other than through the expiration of term shall be filled for the unexpired term in the same manner as provided for an original appointment by the Mayor, in the case of members selected or appointed by him or her, and by the City Commission, in the case of the City Commission member. [MCL 125.3815(2).]

(Ord. 36-84. Passed 12-8-84.)

### **1202.05 CHAIRMAN; MEETINGS; RULES; RECORDS BYLAWS; ANNUAL REPORT.**

The Planning Commission shall electselect its Chairman and secretary from among the appointed members and create and fill such other of its offices as it may consider advisabledetermine. An ex officio Planning Commission member is not eligible to serve as chairperson. The term of each officerthe Chairman shall be one year with eligibility for re-election as specified in its bylaws. The Commission shall hold not less than four at least one regular meetings in each year, and by resolution shall determine the time and place of the meetingsmonth. It shall adopt rules for the transaction of business set out in bylaws and shall keep a record of its resolutions, transactions, findings and determinations, which records shall be a public record. It shall also make an annual written report to the City Commission concerning its operations and the status of planning activities, including recommendations regarding actions by the City Commission related to planning and development. [MCL 125.3817 and 125.3819.]

(Ord. 36-84. Passed 12-18-84.)

## **CHAPTER 1212 ADMINISTRATION, ENFORCEMENT AND PENALTY**

### ***CROSS REFERENCES***

Approval of plats; street system - see M.C.L.A. Sec. ~~125.43~~ MCL 125.3871 and MCL 125.3861

Regulations governing subdivision of land; bond to secure improvement; publication of regulations - see M.C.L.A. Sec. ~~125.44~~ 125.3871.

Approval or disapproval of plats; procedure; effect - see M.C.L.A. Sec. ~~125.45~~ 125.3871.

Certification of city plats - see M.C.L.A. Secs. 125.51 et seq.

Planning Commission - see P. & Z. Ch. 1202

### **1212.01 AUTHORITY OF PLANNING COMMISSION.**

(a) These Subdivision Regulations shall be administered by the Planning Commission by authority granted in the City Charter and in accordance with Act ~~33285~~ of the Public Acts of ~~2008~~1934, as amended, and Act 288 of the Public Acts of 1967, as amended. [MCL 125.3881 (3).]

(b) The Planning Commission may recommend to the City Commission provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. The Planning

Commission may proceed under this subsection on its own initiative or upon the request of the City Commission. [MCL 125.3871 (1).]

(c) Before recommending an ordinance or rule as described in subsection (b), the Planning Commission shall hold a public hearing on the proposed ordinance or rule. The Planning Commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the City. [MCL 125.3871 (3).]

(Ord. 36-84. Passed 12-18-84.)

## **1212.02 PREREQUISITES FOR RECORDING SUBDIVISIONS.**

The Planning Commission shall review and make recommendations on plats before action by the City Commission under section 112 of the land division act, 1967 PA 288, MCL 560.112. No subdivision located within the City shall be received or recorded by the County Register of Deeds until such subdivision has received final approval and been signed by the Planning Commission and the City Commission. [MCL 125.3871 (4).]

(Ord. 36-84. Passed 12-18-84.)

## **1212.99 PENALTY; EQUITABLE REMEDIES.**

(a) A person who violates or fails to comply with any of the provisions of these Subdivision Regulations is responsible for a Class C Municipal civil infraction and shall be subject to the civil fines provided in Section 202.98.

(b) Nothing contained in these Subdivision Regulations or in Section 202.98 shall prevent the Planning Commission, the City Commission or any other public official or private resident from taking such lawful action as is necessary to prevent or remedy a violation of any of the provisions of these Subdivision Regulations.

(Ord. 8-95. Passed 4-18-95.)

## **CHAPTER 1214 SUBDIVIDING AND PLATTING REQUIREMENTS**

1214.01 Subdivision of land; surveys and plats.

1214.02 Replats; vacation required; exceptions.

### ***CROSS REFERENCES***

Approval of plats; street system - see M.C.L.A. Sec. 125.43 MCL 125.3871 and MCL 125.3861

Regulations governing subdivision of land; bond to secure improvement; publication of regulations - see M.C.L.A. Sec. 125.44 125.3871

Approval or disapproval of plats; procedure; effect - see M.C.L.A. Sec. 125.45 125.3871

Certification of city plats - see M.C.L.A. Secs. 125.51 et seq.

Planning Commission - see P. & Z. Ch. 1202

Conformity to Master Plan required - see P. & Z. 1220.01

Planned unit developments - see P. & Z. 1220.11

## **1216.02 PRELIMINARY PLAT PROCEDURES.**

Before making or submitting a final plat for approval, the subdivider shall make a preliminary plat and submit copies to authorities as provided in Sections 111 to 119 of the Subdivision Control Act (Public Act 288 of 1967).

(a) Copies of Preliminary Plat.



(1) The subdivider shall submit four copies of the preliminary plat and other data to the City Clerk, one of which shall be on reproducible material.

(2) The City Clerk shall cause the submitted copies of the plat to be forwarded to the Planning Commission for its study and approval. The Planning Commission shall advise the City Commission of its recommendation concerning the preliminary plat.

(3) The Planning Commission shall function to coordinate the requirements of all other City departments for inclusion in the plan, by distributing the plan to those related departments involved in providing public services as may be deemed necessary to any given plan. The Planning Commission, in its report to the City Commission, shall advise the City Commission of these elements of the plan.

(b) Abstract of Title. The subdivider shall submit an abstract of title, certified to the date of the proprietor's certificate, which establishes the recorded ownership interest of all parties of interest and which is accompanied by an attorney's opinion based on such abstract as to the ownership and marketability of title to the land or, in the alternative, the subdivider shall provide a certificate of title insurance.

(c) Notice of Hearing. The Planning Commission shall not take action on a proposed plat without affording an opportunity for a public hearing. A plat submitted to the Planning Commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than fifteen days before the date of the hearing, notice of the date, time, and place of hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the City of Battle Creek. Similar notices shall be mailed to the owners of land immediately adjoining the proposed platted land. Property owners as found in the records of the City Treasurer, by United States certified mail, of a hearing, pursuant to the Municipal Planning Commission Act, being Act 285 of the Public Acts of 1931, as amended. [MCL 125.3871(5).]

(d) Approval of Planning Commission. The Planning Commission shall recommend to approve, approve with conditions, or disapprove ~~modify or disapprove~~ the plat within sixty-three days after the referral thereof to it. If applicable standards under the land division act, 1967 PA 288, MCL 560.101 to 560.293, and this ordinance or published rules governing the subdivision of land authorized under section 105 of that act, MCL 560.105, are met, then the planning commission shall recommend approval of the plat. If the planning commission fails to act within the required period, then ~~Otherwise,~~ such plat shall be deemed to have been recommended for approval, and a certificate to that effect shall be issued by the planning commission upon request of the proprietor. ~~Commission on demand.~~ The proprietor/applicant, however, may waive this requirement, in writing, and consent to an extension of such period. The grounds for any recommendation of disapproval of a plat shall be stated in the records of the planning commission. [MCL 125.3871(6).]

(e) Tentative Approval.

(1) The City Commission, within thirty days from the date of the Planning Commission action, shall tentatively approve and note its approval on the copy of the preliminary plat to be returned to the subdivider or set forth in writing its reasons for rejection and requirements for tentative approval.

(2) Tentative approval, under this section, shall confer upon the subdivider, for a period of one year from its date, approval of lot sizes, lot orientation and street layout. Such tentative approval may be extended if applied for by the subdivider and granted by the governing body in writing.

(f) Preliminary Approval.

(1) After tentative approval of the preliminary plat by the City Commission, the subdivider shall:

A. Submit copies of the preliminary plat to all public agencies, as required by Sections 112 to 119 of the Subdivision Control Act (Public Act 288 of 1967, as amended);

B. Submit a list of all such authorities to the City Clerk, certifying that the list shows all authorities as required by Sections 112 to 119 of the Subdivision Control Act; and



C. Submit all approved copies to the City Clerk, after all necessary approvals are obtained.

(2) The City Commission, after receipt of the necessary approved copies of the preliminary plat and after a report from the Planning Commission certifying that all conditions and requirements imposed upon the plat at the time of tentative approval have been complied with, shall, within twenty days of receipt of the necessary data, consider and review the preliminary plat.

(g) Effective Period of Approval. The granting of preliminary approval by the City Commission shall be for two years from the date of approval. Failure on the part of the subdivider to proceed under the provisions of these Subdivision Regulations, in accordance with final plat procedures within this two-year period, shall result in the automatic withdrawal of the preliminary approval. If any portion of a preliminary plat has been finally platted, the same shall constitute an automatic extension for two years. In order to reinstate the preliminary plat, the subdivider must again proceed through the pre-application and preliminary plat preparation and submittal states, in accordance with these Subdivision Regulations, provided, however, that the City Commission may make exception hereto and grant an extension.

(h) Model Homes. Construction of up to four model homes in a new subdivision is permitted, but only under the following conditions:

(1) The model shall be constructed on proposed lots and in accordance with all conditions or regulations which would be in effect if the final plat were recorded.

(2) The final plat has been submitted to the Planning Commission for approval.

(3) No certificates of occupancy shall be issued until such time as the plat has been recorded and all utilities and improvements have been installed and accepted by the City.

(Ord. 36-84. Passed 12-18-84.)

### **1216.03 FINAL PLAT; APPLICATION PROCEDURES AND APPROVAL.**

The final plat shall conform substantially to the preliminary plat as approved by the Planning Commission. If desired by the subdivider, the final plat may constitute only that portion of the approved preliminary plat which he proposes to record and develop at the time, provided that the approved preliminary plat comprises more than twenty-five single or two-family lots or ten acres, whichever is less, or, in the case of a multifamily, commercial or industrial development, more than ten acres. The final plat shall conform to the provisions of the Subdivision Control Act (Public Act 288 of 1967, as amended).

(a) Submittal. Prior to filing the final plat with the City Clerk for transmittal to the City Commission, the subdivider shall submit to the Planning Commission a written application for approval of the plat along with five copies of the final plat and one set of the final construction plans, drawn on linen or mylar (if the plans are to be drawn by the developer's engineer), and two copies of any landscaping plans as may be required. Such application shall be submitted not less than ten days prior to the regular monthly meeting of the Planning Commission at which the application is to be considered.

(b) Review. Prior to consideration of the final plat by the Planning Commission, the City Engineer shall review the plat and the accompanying construction plans to determine their conformity to engineering specifications and improvement plans proposed in the preliminary plat. The Planning Department shall also review the final plat application and determine its conformity or nonconformity with the lot layout, street design and other proposals contained in the approved preliminary plat. The City Engineer and the Department shall certify their approval or disapproval of the plat, in writing, and submit it to the Planning Commission for its consideration.

(c) Approval.

(1) If the final plat is in substantial agreement with the preliminary plat previously approved by the Planning Commission, the Planning Commission shall prepare a report on its recommendations to the City Commission. The Secretary of the Planning Commission shall sign the plat indicating the Planning Commission's approval of the plat. The



signed copies and recommendations shall then be transmitted to the City Commission. A copy of the Planning Commission's report shall be retained in the files of the Planning Commission.

(2) If the final plat does not conform to the street arrangement and other aspects of the approved preliminary plat, or to preliminary utility and facility plans, the Planning Commission shall prepare a report to the City Commission setting forth the points at which the plat fails to conform to the approved preliminary plat and recommending to the City Commission that it disapprove the plat until the Planning Commission's objections have been overcome. The plat and the accompanying report shall be forwarded immediately to the City Commission. A copy of the report shall be retained in the files of the Planning Commission.

(3) A plat approved by the City Commission and recorded under section 172 of the land division act, 1967 PA 288, MCL 560.172, shall be considered an amendment to the master plan and a part thereof. The approval of the final plat by the City Commission does not constitute or effect indicate public acceptance of any street, rights of way, easements, or other open space shown upon the plat. lands, rights of way or easements shown on the plat. [MCL 125.3871(7).]

(Ord. 36-84. Passed 12-18-84.)

#### **1220.01 CONFORMITY TO THE MASTER PLAN.**

The proposed subdivision and its ultimate use shall be in conformity with the Master Plan, as adopted, and shall not encroach upon any area designated in such Plan for future public use.

Where such conflict appears and the land in question is otherwise suitable for subdividing, the City Commission, or in the case of a school site, the Battle Creek Board of Education or the Lakeview Board of Education, in its tentative consideration, shall decide whether or not to implement such Plan. If the City Commission or the Board of Education elects to implement such Plan, it shall declare its intent to purchase the land within ninety days and shall accomplish the acquisition within two years.

Land which the Planning Commission has found to be unsuitable for subdivision development due to flooding, poor drainage, soil conditions or other features which are likely to be harmful to the health, safety and welfare of future residents shall not be subdivided unless satisfactory methods of correction are formulated by the subdivider and approved by the Planning Commission.

A street; square, park, playground, public way, ground or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a City master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the Planning Commission. The Planning Commission shall submit its reasons for approval or disapproval to the City Commission. If the Planning Commission disapproves, then the City Commission may overrule the Planning Commission by a vote of not less than 2/3 of its entire membership. If the Planning Commission fails to act within 35 days after submission of the proposal to the Planning Commission, then the project shall be considered to be approved by the Planning Commission. [MCL 125.3861 (1).]

(Ord. 36-84. Passed 12-18-84.)



## **CHAPTER 1230 GENERAL PROVISIONS AND DEFINITIONS**

### **1230.01 PURPOSES.**

The zoning districts and the regulations specified for each district established by this Zoning Code have been constructed in accordance with a general plan for the physical development of the City. This plan, called the Master Plan, provides thoroughly considered objectives for the sound and orderly development of the City.

It is the purpose of this Zoning Code to promote the safety, health, morale, convenience and general welfare; to encourage the use of lands and natural resources in the City in accordance with their character, adaptability and suitability for particular purposes; to conserve social and economic stability, property values and the general character and trend of community development; to limit the improper use of land; to prevent excessive concentrations of the population; to lessen congestion on public streets and highways; to facilitate adequate provision of streets and highways, sewerage and drainage, water supply and distribution, educational, recreational and other public facilities; and to conserve life, property, natural resources and the expenditure of public funds for public facilities and services, by establishing standards for development in accordance with the objectives contained in the Master Plan, and by providing for the enforcement of such standards.

It is the further purpose of this Zoning Code to adopt provisions for each designated zoning district within which the location, size and use of buildings and minimum open spaces, sanitary and safety measures required and the maximum number of families to be housed in buildings erected or altered in the future, are specified. [MCL 125.3203.]  
(Ord. 36-84. Passed 12-18-84.)

### **1230.06 DEFINITIONS.**

As used in this Zoning Code:

(1) Accessory Building and Use. "Accessory building" means a subordinate building located on the same lot as the main building, the use of which is naturally and normally incidental to that of the dominant use of the main building or land. "Accessory use" means a use which is naturally and normally incidental to the main use of the premises.

(2) Alley. "Alley" means a public or private way which affords only a secondary means of access to property abutting thereon.

(2A) Antique. "Antique" means an object, such as, but not limited to, a work of art, piece of furniture, decorative object, or household furnishings, but excluding clothing, whose value is derived by virtue of its age, rarity, artistic or historical significance, or which has an estimated age of at least fifty years.

(Ord. 08-06. Passed 4-18-06.)

(2B) Antique Shop. "Antique shop" means a retail establishment whose primary stock-in-trade is the sale of antiques.

(Ord. 08-06. Passed 4-18-06.)

(3) Apartment. "Apartment" means a room or suite of rooms in a two-family or multiple dwelling, or, where more than one living unit is established over nonresidential uses, that which is intended or designed for use as a residence by a single family, which includes a bath and kitchen accommodations.

(4) Apartment Hotel. "Apartment hotel" means an apartment building, under resident supervision, which maintains an inner lobby through which all tenants must pass to gain access to the apartments and which may furnish, for the exclusive use of its tenants by previous arrangement and not to anyone who may apply, services that are ordinarily furnished by hotels.

(5) Apartment House. See Dwelling, Multiple.

(6) Basement. "Basement" means a story having a part, but not more than one-half, of its height below grade. A basement is counted as a story for the purpose of height regulation, if subdivided and used for dwelling purposes. However, a basement is not counted as a story for the purpose of height



regulation if subdivided and used for dwelling purposes for a janitor employed on the premises and his family, who occupy not more than 500 square feet of floor area of the basement for habitable rooms.

(7) Boarding House. "Boarding house" means a building, other than a hotel, where, for compensation pursuant to previous arrangement, meals, or lodging and meals, are provided for three or more persons.

(8) Building. "Building" means a structure designed or intended for the support, enclosure, shelter or protection of persons, animals or property.

(9) Building, Height of. "Height of building" means the vertical distance from the grade to the highest point of the coping of a flat roof, to the deck line of a mansard roof or to the mean height level between eaves and the ridge for gable, hip and gambrel roofs.

(10) Building Line. "Building line" is the same as the front yard line.  
(Ord. 36-84. Passed 12-18-84.)

(10A) Catering Business. "Catering business" means a business where food is prepared at the business address and transported for serving off-site locations.  
(Ord. 18-90. Passed 7-24-90.)

(11) Cellar. "Cellar" means a story that has more than one-half of its height below grade. A cellar is not included in computing the number of stories for the purpose of height measurement.

(12) Convalescent Home, Nursing Home or Home for the Aged. "Convalescent home, "nursing home" and "home for the aged" mean a home for the aged, chronically ill or incurable persons in which three or more persons, not of the immediate family, are received, kept and provided with food or shelter and care, for compensation, but does not include hospitals, clinics or similar institutions which are devoted primarily to the diagnosis, treatment or care of the sick or injured.

(13) Day Care Center. "Day care center" means a day care group facility which gives care to three or more pre-school children away from their homes and which is under the direction of a person with experience in child care.

(14) District. "District" means a section of the City for which the regulations governing the use of buildings and premises, the height of buildings, the size of yards and the intensity of use are uniform.

(15) Drive-in Restaurant. "Drive-in restaurant" means a restaurant where, either by design or physical facilities or by service and/or packaging procedures, patrons are encouraged to consume their purchases while seated in their motor vehicles in the off-street parking area accessory to the business.

(16) Dwelling. "Dwelling" means a building, mobile home or premanufactured or pre-cut structure which is designed and used exclusively for residential purposes.

(17) Dwelling, Multiple. "Multiple dwelling" means a building or group of buildings on one lot which has accommodations for and is occupied exclusively by three or more families.

(18) Dwelling, Single-Family. "Single-family dwelling" means a building, mobile home or premanufactured or pre-cut dwelling structure designed and used for the complete living accommodations of a single family.

(19) Dwelling, Two-Family. "Two-family dwelling" means a building which has accommodations for and is occupied exclusively by two families living independently of each other.

(20) Essential Service Structure. "Essential service structure" means a structure used or occupied, or intended for use or occupancy, as a transformer substation, communications relay station, pumping station, water tower, water collection and treatment facility, gas or steam regulating station, high voltage transmission tower or water or sewage lift station and other buildings or structures of a similar function.

(21) Essential Services. "Essential services" means the erection construction, alteration and maintenance by a public utilities company or City department, for the purpose of furnishing adequate service by such public utility or City department, for the public health, safety or general welfare, of gas, electrical, communication, water and wastewater distribution systems, including poles, wires, mains, drains, sewers, pipes, conduits, cables, fire alarms and police call boxes, public telephones, hydrants and other similar equipment and accessories in connection therewith, other than essential service structures.

(22) Facility, State Licensed Residential. "State licensed residential facility" means a facility constructed for residential purposes, whose structure and staff are properly licensed by the State, which facility provides residential services for six or less persons under twenty-four hour supervision or care, for persons in need of that supervision or care, except for adult foster care facilities licensed by a State agency for the care and treatment of persons released from, or assigned to, adult correctional institutions,



in accordance with Public Act 28 of 1977, as amended. Such state licensed residential facilities shall be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone. [MCL 125.3206]

(23) Family. "Family" means an individual or a group of two or more persons related by birth, adoption or marriage, together with not more than two additional persons not related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling.

(24) Fast Food Restaurant. "Fast food restaurant" means an establishment, the principal business of which is the sale of rapidly prepared food directly to the customer in a ready-to-consume state for consumption either within the restaurant building or off the premises.

(25) Filling or Service Station. "Filling station" or "service station" means a structure or land used primarily for supplying automobile fuel and motor oil, at retail, directly to the customer, including the supplying of accessories, replacement parts and services that are essential to the normal operation of automobiles, but not including body or fender work, painting or major motor repairs.

(26) Floor Area. "Floor area" means the total floor area enclosed by exterior walls, excluding such area not accessible by a fixed stairway, ramp, escalator or elevator or an area not fit for occupancy.

(27) Frontage. "Frontage" means all the property on one side of a street between two intersecting streets, either crossing or terminating, measured along the line of the street, or if the street is dead-ended, then all of the property abutting on one side between an intersecting street and the dead end of the street.

(28) Garage, Private. "Private garage" means an accessory building, not exceeding 1,000 square feet, that houses vehicles or property that are for the private use of the occupants of the lot on which the private garage is located.

(29) Garage, Public. "Public garage" means any building or premises, except those used as private or community garages, used for equipping, repairing, hiring, selling or storing motor-driven vehicles.

(30) Grade. "Grade" means:

(a) For buildings having walls adjoining one street only, the elevation of the sidewalk at the center of the wall adjoining the street;

(b) For buildings having walls adjoining more than one street, the average of the elevation of the sidewalk at the centers of all walls adjoining the streets; and

(c) For buildings having no walls adjoining the street, the average level of the finished surface of the ground adjacent to the exterior walls of the building.

Any wall approximately parallel to and not more than five feet from a street line shall be considered as adjoining the street. Where no sidewalk exists, the grade shall be determined by the City Engineer.

(31) Group child care home. "Group child care home" means a private home in which more than 6 but not more than 12 minor children are given care and supervision for periods of less than 24 hours a day unattended by a parent or legal guardian, except children related to an adult member of the family by blood, marriage, or adoption. Group child care home includes a home in which care is given to an unrelated minor child for more than 4 weeks during a calendar year. This term shall only apply to the bona fide private residence of the operator of the group child care home. [MCL 125.3102(j); MCL 722.111(i)(iv); MCL 125.3102(j).]

- (32+) Home Occupation. "Home occupation" means an activity carried on for compensation ~~gain~~ by a resident conducted as an accessory use in the resident's dwelling unit. Consideration shall be defined as some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other. This section does not prohibit the regulation of noise, advertising, traffic, hours of operation, or other conditions that may accompany the use of a residence under this section. [MCL 125.3204.]

(32) Hotel. "Hotel" means a building in which lodging or boarding is provided and offered to the public for compensation and in which ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. As such, it is open to the public, in contradistinction to a rooming or boarding house which is separately defined.



(343) Institution. "Institution" means a building or premises occupied by a nonprofit corporation or a nonprofit establishment for public use.

(354) Junk or Salvage Yard. "Junk yard" or "salvage yard" means a place where two or more motor vehicles, not in running condition, or parts thereof, are stored in the open, in a fenced area or in a partially enclosed building and are not being restored to operating condition, or any land used for the wrecking or storing of such motor vehicles, or parts thereof, stored in an open area and not being restored to operating condition. "Junk yard" or "salvage yard" includes areas where waste, scrap metal, used building materials, paper, rags or similar materials are bought, sold, exchanged, stored, baled, packed, disassembled or handled, but excludes such uses taking place within a completely enclosed building.

(365) Loading Berth. "Loading berth" means a space within a main building or on the same lot providing for the standing, loading or unloading of trucks.

(Ord. 36-84. Passed 12-18-84.)

(376) Lot.

(a) "Lot" means a parcel of land consisting of a lot of record and any contiguous lots of record or contiguous portions of lots of record, held in single or common ownership, located within a block and having its principal frontage upon a street.

(b) "Developed lot" means a lot occupied or intended for occupancy by a lawful use permitted by this Zoning Code, which contains a main building and any accessory buildings or uses.

(c) "Vacant lot" means a lot that contains no structures.  
(Ord. 28-90. Passed 10-30-90.)

(376A) Lot, Flag or Pothandle. "Flag or pothandle lot" means a lot which has all of the following characteristics:

- A. It has less than the required frontage or no frontage on a public street.
- B. It is located behind one or more lots which have frontage on a public street.
- C. Access to it is gained by an easement, license, corridor, alley, or a private road less than sixty-six feet in width off of or from a public street.

(Ord. 15-93. Passed 10-5-93.)

~~(djj) Lot, Corner. "Corner lot" means a lot abutting upon two or more streets at their intersection or upon two parts of the same street, which streets form an interior angle of 135 degrees or, if curved, their tangents to the curve at the place of beginning form such an interior angle. Corner and interior lots. A "corner lot" is a lot of which at least 2 adjacent sides abut for their full length upon a street. A lot other than a corner lot is an "interior lot". [MCL 125.402 (8).]~~

~~(e) Front, rear and depth of lot. The front of a lot is that boundary line which borders on the street. In case of a corner lot the owner may elect by statement on his plans either street boundary line as the front. The rear of a lot is the side opposite to the front. In the case of a triangular or gore lot the rear is the boundary line not bordering on a street. The depth of a lot is the dimension measured from the front of the lot to the extreme rear line of the lot. In the case of irregular shaped lots the mean depth shall be taken. [MCL 125.402(9).]~~

~~———kk)—— Lot, Depth of. "Depth of lot" means the mean horizontal distance between the front and rear lot lines.~~

(39) Lot Line. "Lot line" means the lines demarking the boundary of a lot as described herein:

(a) Front Lot Line. "Front lot line" means, in the case of an interior lot, the lot line separating such lot from the street and, in the case of a corner lot, the line having the smallest dimension on the street and, in the case of a double frontage lot, each line separating the lot from the street.

(b) Rear Lot Line. "Rear lot line" means the lot line opposite the front lot line regardless of its irregularity or direction, provided that it does not intersect therewith.

(c) Side Lot Line. "Side lot line" means a lot line which is not a front or rear lot line. A lot line separating a lot from a street is an exterior side lot line. A lot line separating adjacent lots is an interior side lot line.

(40) Lot of Record. "Lot of record" means a lot which is part of a subdivision, the map of which has been recorded in the office of the County Register of Deeds, or a parcel of land, the deed to which was recorded in the office of the County Register of Deeds, prior to the adoption of the 1950 Zoning Code.



(41) Lot Width. "Lot width" means the width of the lot at the required building line.

(42) Mobile Home. "Mobile home" means a factory assembled structure, at least eight feet wide and thirty-two feet in length, which is built on a permanent chassis and designed to be used as a dwelling unit, with or without a permanent foundation, when connected to required utilities.

(43) Mobile Home Park. "Mobile home park" means any site required improvements and utilities for the long-term parking of mobile homes, which may include services and facilities for residents.

(44) Nonconforming Use. "Nonconforming use" means a building or land lawfully occupied by a use at the time of passage of this Zoning Code (December 18, 1984), or an amendment thereto, which does not conform, after the passage of this Zoning Code or an amendment thereto, with the use regulations of the district in which it is situated.

(45) Nursery School. "Nursery school" means a day care group facility which has as its main objective a developmental program for three or more preschool children and whose staff meets the educational qualifications as established by the State Department of Education.

(46) Parking Space. "Parking space" means an area enclosed in the main building or in an accessory building, or unenclosed, sufficient in size to store one standard automobile and, if unenclosed, comprising an area of not less than 166.5 square feet, exclusive of a driveway or aisleway connecting the parking space with a street or alley, and permitting the satisfactory ingress and egress of an automobile.

(47) Recreational Vehicle. "Recreational vehicle" means a vehicle, as herein defined, which is intended for recreational use, including, but not limited to, travel trailers, folding campers, pick-up campers, motor homes and boats.

— (48) Rooming House. "Rooming house" means a building any dwelling occupied in such a manner that certain rooms, in excess of those used by the members of the immediate family and occupied as a home or family unit, are leased or rented to three or more persons outside of the family, without any attempt to provide therein or therewith, cooking or kitchen accommodations for individuals leasing or renting rooms. This definition is in contradistinction to hotels open to transients (MCL 125.402 (3a).)  
~~g or place where lodging is provided, or which is equipped regularly to provide lodging, by pre-arrangement for a definite period, for compensation, for three or more persons in contradistinction to hotels open to transients.~~

(49) Story. "Story" means that portion of a building, other than a cellar, included between the surface of any floor and the surface of the floor next above it or, if there is no floor above it, then the space between the floor and the ceiling next above it.

(50) Story, Half. "Half story" means a space under a sloping roof which has the line of intersection of the roof decking and the wall face not more than five feet above the top floor level, in which space not more than sixty percent of the floor area is finished off for use and which may be used for occupancy only in conjunction with and by the occupants of the floor immediately below.

(51) Street. "Street" means all property dedicated or intended for public or private street, highway, freeway or roadway purposes, or subject to a public easement therefor.

(52) Street Line. "Street line" means a dividing line between a lot, tract or parcel of land and the right-of-way line for a contiguous street.

(53) Structural Alteration. "Structural alteration" means a change in the supporting members of a building, such as bearing walls or partitions, columns, beams or girders, or a substantial change in the roof or in the exterior walls except such alterations as may be required for the safety of the building and changes and alterations of the facade of the building.

(54) Structure. "Structure" means anything constructed or erected, the use of which requires a permanent location on the ground or which is attached to something having a permanent location on the ground, including, but not limited to, advertising signs, billboards, television receiving dishes, fences, tents, recreational vehicles, and pergolas. [MCL 125.3201(4) and MCL 125.3406.]

(54A) Tatoo parlor. "Tattoo parlor" means a business having as its principal activity the application or placing, by any method, of designs, letters, scrolls, figures, symbols or other marks upon or under the human skin with ink or any other substance or method resulting in the coloration of the skin by the aid of needles or any other instrument designed to touch or puncture the skin.  
(Ord. 19-01. Passed 12-4-01.)



(55) Tourist Home. "Tourist home" means a building, other than a hotel, where lodging is provided and offered to the public by a resident family for compensation to three or more individuals and which is open to transient guests. "Bed and breakfast" houses are considered "tourist homes" for the purpose of this Zoning Code.

(56) Vehicle. "Vehicle" means every device, regardless of its operable condition, in, upon or by which, by its original design and intent, any person or property might be transported or drawn upon a highway or waterway, except device designed to move by human power exclusively.

(57) Yard. "Yard" means an open space that is on the same lot with a building, unoccupied and unobstructed by any portion of a structure from the ground upward, except as otherwise provided herein. In measuring a yard for the purpose of determining the width of a side yard, the mean horizontal distance between the lot line and the main building shall be used.

(a) "Front yard" means that area measured by the full width of the front lot line to a depth measured from such lot line to the first supporting member of the main structure. The first supporting member includes the main building or any projection thereof, other than the usual steps, entranceways, unenclosed balconies or open roofless porches. For the purpose of this Zoning Code, properties having frontage on a lake, river, creek or other waterway shall be required to meet front yard requirements along that water frontage and along any street frontage.

(b) "Side yard" means a yard between the main building and the side line of a lot that extends from the front yard line to the rear yard line.

(c) "Rear yard" means a yard extending across the rear of a lot, measured between the side lot lines, and being the minimum horizontal distance between the rear lot line and the rear of the main building or a projection thereof, other than steps, unenclosed balconies or porches. On corner lots the rear yard shall be considered as parallel to the street upon which the lot has its least dimension. On both corner lots and interior lots, the rear yard shall, in all cases, be at the opposite end of the lot from the front yard.

(Ord. 36-84. Passed 12-18-84.)

(58) Zoning Administrator. "Zoning Administrator" means the Director of Planning and Zoning, as well as any division or employee reporting to the Director, which or who is charged with the responsibility for administering and enforcing this Zoning Code.

(Ord. 8-95. Passed 4-18-95.)

(59) Zoning Code. "Zoning Code" means Ordinance 36-84, passed December 18, 1984, codified herein as Title Six of Part Twelve - the Planning and Zoning Code.

(Ord. 36-84. Passed 12-18-84.)

## **CHAPTER 1232 ADMINISTRATION, ENFORCEMENT AND PENALTY**

### ***CROSS REFERENCES***

Zoning Board of Appeals - see M.C.L.A. Sec. ~~125.585~~[125.3601](#)

Meetings of the Board; freedom of information - see M.C.L.A. Sec. ~~125.585a~~ [125.3701](#)

Review by Circuit Courts; appeals to Supreme Court; procedure - see M.C.L.A. Sec. ~~125.590~~

[125.3606](#)

Actions for review; proper and necessary parties; notice; failure to appear - see M.C.L.A. Sec. ~~125.591~~

[125.3607](#)

Pending actions and preservation of rights - see P. & Z. 1230.04

District boundary uncertainties - see P. & Z. 1232.03

Interpretation, purpose and conflicts of Zoning Code - see P. & Z. 1232.05

Sign Variances – see [§1296.31](#).

Rental housing - see B. & H. Ch. 1463

### **1232.06 AMENDMENTS.**

a. Initiation. An amendment to this Zoning Code may be initiated by:

(1) The City Commission;



- (2) The Planning Commission; or
- (3) Petition, which shall not be initiated for the same property more often than once every twelve months.

b. Definition. An amendment to this Zoning Code shall be deemed to be any change to the text or to the Official Map, including:

- (1) Petitions for zoning reclassification; or
- (2) Special use permits.

c. Referral to Planning Commission. Upon receipt of a petition by the City Commission, the same shall be referred to the Planning Commission for study and report. The City Commission shall not act on any petition until the Planning Commission submits its report to the City Commission.

d. Action by Planning Commission. The Planning Commission shall cause a complete study of the petition to be made by the Planning and Community Development Director and shall recommend to the City Commission such action as it deems proper.

e. Public Hearings.

(1) On any amendment to this Zoning Code, the Planning Commission shall hold a public hearing prior to the amendment being referred to the City Commission for action. A record of the comments received at the public hearing shall become a part of the Planning Commission report and recommendation to the City Commission. The following requirements shall pertain to public hearings held before the Planning Commission [\[MCL 125.3202\(2\).\]](#):

(a) Not less than fifteen days notice of the date, time and place of the hearing shall be published in a newspaper of general circulation in the City.

(b) Not less than fifteen days notice of the date, time and place of the hearing shall be given, by regular mail, to each public utility company and to each railroad company owning or operating any public utility or railroad within the City that registers its name and mailing address with the City Clerk for the purpose of receiving such notices.

(c) Not less than fifteen days notice shall be given, by regular mail, to [the owners of property that is the subject of the request. Notice shall also be given to- all persons to whom real property is assessed property owners located within 300 feet of the subject property affected by the -amendment, as listed in the most current assessment roll and to the occupants of all structures with 300 feet of the subject property regardless whether the property or structure is located in the zoning jurisdiction. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, then notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.](#)

(d) [The notice under subsection \(c\) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, then the term "occupant" may be used for the intended recipient of the notice. However, failure to mail such notice, or failure of property owners to receive such notice, shall not invalidate the amendment. \[MCL 125.3103.\]](#)

(e) [A notice under this section shall do all of the following:](#)

[\(1\) Describe the nature of the request.](#)

[\(2\) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, then other means of identification may be used.](#)

[\(3\) State when and where the request will be considered.](#)

[\(4\) Indicate when and where written comments will be received concerning the request. \[MCL 125.3103 \(4\).\]](#)

(f) [For any group of adjacent properties numbering 11 or more that is proposed for rezoning, the requirements of above subsection \(c\) and the requirement of above subsection \(e\)\(2\) that street addresses be listed do not apply to that group of adjacent properties. \[MCL 125.3202\(3\).\]](#)

(2) The City Commission, upon receipt of the Planning Commission study and report, shall publish a notice indicating the proposed amendment, proposed use and affected property in a newspaper



of general circulation in the City. Such notice shall be published at least ~~fifteen~~five days before the City Commission meeting, and shall indicate the time, date and place of such meeting. [MCL 125.3401(2)]

(f.) Fees. Petitions for an amendment to this Zoning Code shall be accompanied by a fee of two hundred fifty dollars (\$250.00). Such fee is applicable when filing a petition for zoning reclassification or special use permits and is nonrefundable.

(Ord. 36-84. Passed 12-18-84.)

g. Protest Petition. And amendment to a zoning ordinance is subject to a protest petition under 1232.07. [MCL 125.3202(4).]

h. An amendment to conform a provision of the zoning ordinance to the decree of a court of competent jurisdiction as to any specific lands may be adopted by the City Commission and the notice of the adopted amendment published without referring the amendment to any other board provided for under this ordinance. [MCL 125.3202 (5).]

### **1232.07 PROTEST PETITION. SUBMISSION OF ORDINANCES TO ELECTORS.**

(a) An amendment to the zoning ordinance is subject to a protest petition as required by this subsection. If a protest petition is filed, then approval of the amendment to the zoning ordinance shall require a 2/3 vote of the City Commission. The protest petition shall be presented to the City Commission before final legislative action on the amendment and shall be signed by 1 or more of the following: [MCL 125.3403(1).]

(1) The owners of at least 20% of the area of land included in the proposed change.

(2) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.

(b) Publicly owned land shall be excluded in calculating the 20% land area requirement under subsection (1). [MCL 125.3403(2).]

### **1232.08 REQUIREMENT OF PAYMENT OF FEES.**

The City may require the payment of reasonable fees for zoning permits as a condition to the granting of authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles, within a zoning district established under this act. [MCL 125.3406.]

**1232.98 TRANSFER OF OWNERSHIP.** It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of the compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

## **CHAPTER 1234 ZONING BOARD OF APPEALS**

### **1234.01 ESTABLISHMENT; POWERS; MEMBERSHIP; COMPENSATION.**

(a) The Zoning Board of Appeals for the City, having been heretofore created in accordance with Public Act 207 of 1921, ~~repealed and replaced as amended by Public Act 110 of 2006~~, the "Michigan Zoning Enabling Act," is hereby continued and, in addition to the general duties and powers conferred upon it by law, may exercise such powers as are conferred upon it by the Charter and this Zoning Code. The Board shall be organized as provided in this chapter.

(b) The word "Board," when used in this Zoning Code, shall be construed to mean the Zoning Board of Appeals. The Board shall consist of seven members appointed by a majority vote of the City Commission. The members shall serve for terms as follows: Two for one year, two for two years and three for three years, in the first instance, and thereafter all appointments shall be for three years each, except for members serving because of their membership on the Planning Commission and/or the City



Commission, whose terms shall be limited to the time they are members of those bodies.. At least One regular member of the Board may shall be a member of the City Planning Commission. The remaining regular members of a zoning board of appeals, and any alternate members under subsection (c), shall be selected from the electors of the City of Battle Creek residing within the City of Battle Creek. The members selected shall be representative of the population distribution and of the various interests present in the City of Battle Creek. One regular or alternate member of the Board may be a member of the City Commission; however, such a member shall not serve as chairperson of the Board. The Chairman of the Board shall be elected annually by the members of the Board. Vacancies shall be filled by the City Commission for the unexpired term. A successor shall be appointed not more than one month after the term of the preceding member has expired. A vacancy on the Board shall be filled for the remainder of the unexpired term in the same manner as the original appointment. [MCL 125.3601(10) and (11).]  
Members of the Board shall receive ten dollars (\$10.00) each for attendance at each regular and special meeting, but not more than twenty dollars (\$20.00) shall be paid to any member in any single calendar month.

(ec) The City Commission may appoint, in accordance with procedures specified in this Zoning Code, not more than two alternate members for the same term as regular members of the Board. The alternate members may be called, as specified in this Zoning Code, to sit as regular members of the Board if a regular member is absent from or unable to attend two or more consecutive meetings, or for a period of more than thirty consecutive days. An alternate member may also be called to serve for the purpose of reaching a decision on a case in which the regular member has abstained because of a conflict of interest. The alternate member appointed shall serve in the case until a final decision has been made. The alternate member shall have the same voting rights as a regular member of the Board.

(d) An employee or contractor of the City Commission may not serve as a member of the zoning board of appeals. [MCL 125.3601(6).]

(de) The Board or the City Commission may, after a hearing, remove a member of the Board for inefficiency, misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. neglect of duty or malfeasance A Board member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.- [MCL 125.3601(9).]

(f) The Board shall not conduct business unless a majority of the regular members of the Board are present. [MCL 125.3601(12).]

(g) A member of the Board who is also a member of the Planning Commission or the City Commission shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the City Commission. However, the member may consider and vote on other unrelated matters involving the same property. [MCL 125.3601(13).]  
(Ord. 36-84. Passed 12-18-84.)

## **1234.02 MEETINGS; RULES OF PROCEDURE; RECORDS.**

(a) Meetings of the Zoning Board of Appeals shall be held at the call of the Chairperson and at such other times as the Board in its rules of procedure may specifydetermine. There shall be a fixed place for meetings and all meetings shall be open to the public. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses. [MCL 125.3602(1).]

(b) The Board shall adopt its own rules of procedure and maintainkeep a public record of its proceedings which shall be filed in the office of the City Clerk. [MCL 125.3602 (2).]  
(Ord. 36-84. Passed 12-18-84.)

## **1234.03 APPEALS TO ZONING BOARD OF APPEALS.**

(a) An appeal may be taken to the Zoning Board of Appeals by any person aggrieved or by an officer, department, board, or bureau of this state or the City. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided for under the Michigan Zoning Enabling Act., PA 2006, No. 110. The zoning board of appeals shall state the grounds of any determination made by the board. [MCL 125.3604(1).]



~~(b) affected by a decision of the Building Inspection Department.~~ Such appeal shall be taken within such time as is prescribed by the Board by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals Department a notice of appeal, specifying the grounds for the appeal thereof. The body or officer from whom the appeals is taken Department shall immediately transmit to the Board all of the papers constituting the record upon which the action appealed from was taken. [MCL 125.3604(2).]

~~(cb)~~ An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after the notice of appeal has been filed, that by reason of facts stated in the certificate a stay would, in his or her opinion, cause imminent peril to life or property, in which case the proceedings shall not be stayed otherwise than by a restraining order, all of the papers constituting the record upon which the appeal was taken. [MCL 125.3604(3).]

~~(d)~~  
~~(e)~~ The Board shall fix a reasonable time for the hearing of an appeal and notice shall be given as provided in §1232.06 (e). give ten days notice thereof to all persons to whom real property within 300 feet of the premises in question is assessed and to the occupants of all single and two-family dwellings within 300 feet. Such notice shall be delivered personally or by mail, addressed to the respective owners and tenants at the addresses given in the last assessment roll. The Board shall decide the same within thirty days after the final hearing thereon. If the tenant's name is not known, the term "occupant" may be used. Any party presenting an appeal to the Board shall appear in person or by agent or attorney at the hearing.

~~(e)~~ At a hearing under this section, a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit. [MCL 125.3604 (1) – (6).]

~~(fd)~~ Fees, in accordance with a schedule enacted from time to time by the City Commission, by resolution, shall be paid to the Department at the time the notice of appeal is filed.  
(Ord. 36-84. Passed 12-18-84.)

#### **1234.04 JURISDICTION.; VOTING REQUIREMENTS FOR DETERMINATIONS.**

(a) The Zoning Board of Appeals shall have the following powers:

~~(1)~~ (1) To hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of zoning maps;

~~(2)~~ To hear and decide on matters referred to the Board or upon which the Board is required to pass under a zoning ordinance;

~~(3)~~ To hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of this zoning ordinance, appeals where it is determined that there is an error of law in any order, requirement, decision or determination made by the Building Inspection Department in the enforcement of this Zoning Code; and

~~(42)~~ To grant exceptions in the following instances:

A. Permit the extension of a district where the boundary line of a district divided a lot held in single ownership at the time of passage of this Zoning Code (Ordinance 36-84, passed December 18, 1984);

B. Interpret this Zoning Code in such a way as to carry out the intent and purpose of the Zoning District Map, where the street layout existing on the ground varies from that shown on the Map;

C. Permit the reconstruction of a nonconforming building which has been damaged by explosion, fire, act of God or the public enemy, to the extent of more than ~~fiftysixty~~ percent of its insurable value, where the Board finds some compelling necessity requiring a continuance of the nonconforming use, and the primary purpose of continuing the nonconforming use is not to continue a monopoly; and

D. Waive or reduce the parking and loading requirements in the multiple dwelling, commercial or industrial districts whenever the character or use of the building is such as to make unnecessary the full provision of parking or loading facilities, or where such regulations would impose an unreasonable hardship upon the use of the lot, as contrasted with merely granting an advantage or convenience. The Board may waive or reduce the requirements of off-street parking whenever any property lies within a 300-foot radius of a publicly owned parking lot.

(b) The Board shall have the authority to grant the following variations:



(1) Nonuse. If there are practical difficulties for nonuse variances relating to the construction, structural changes, or alterations of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a variance so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice is done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq.; and Permit a variation in the yard requirement of any district where there are unusual and practical difficulties or unnecessary hardships in the carrying out of the requirements of this Zoning Code due to the irregular shape of the lot or topographical or other conditions, provided that such variation will not seriously affect any adjoining property or the general welfare of the public; and [MCL 125.3604(7) and (8).]

(2) Use. If there is an unnecessary hardship in the way of carrying out the strict letter of the zoning ordinance, then the Board may grant a use variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The Board may impose conditions as otherwise allowed under the Michigan Zoning Enabling Act, MCL 125.3101 et seq. Authorize, upon appeal, whenever a property owner can show that a strict application of the provisions of this Zoning Code relating to the use, construction or alteration of buildings or structures, or the use of land, will impose upon them unusual and practical difficulties or hardship, such variations of the strict application of this Zoning Code as are in harmony with its general purpose and intent, but only when the Board is satisfied that a granting of such variation will not merely serve as a convenience to the applicant, but will alleviate some demonstrable and unusual hardship or difficulty so great as to warrant a variation from the Master Plan, as established by this Zoning Code, and that the surrounding property will, at the same time, be properly protected. [MCL 125.3604 (7), (8) and (9).]

(c) Variance Standards: In consideration of all appeals and proposed exceptions to or variations from this Zoning Code, the Board shall, before making any such exceptions or variations, in a specific case, first determine that the applicant has met all of the following conditions as set out for the specific type of variance requested are satisfied:

(1) Nonuse (dimensional) Variances:

- A. When it can be shown that a practical difficulty would, in fact, exist if the strict non-use requirements of this Ordinance (e.g., lot area, width, setbacks, building height, etc.) were applied to a specific building project, the Board may grant a variance from these requirements. The practical difficulty from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return. may be granted only when it can be clearly demonstrated by the petition that hardship or practical difficulty will, in fact, exist if such variance is not granted.
- B. The practical difficulty must be exceptional and peculiar to the subject parcel of land which do not generally exist throughout the City and may not be self-imposed or the result of an earlier action by the applicant. If the parcel of land could be reasonably built upon in conformance with the requirements of this Ordinance by simply relocating or redesigning the structure(s), then a variance shall not be granted.
- C. A variance shall not be granted when it will alter or conflict with the intent of this Ordinance considering the public benefits intended to be secured by this Zoning Code and the rights of others whose property would be affected by the allowance of the variance.
- D. Any variance granted shall be the minimum necessary to provide relief for the practical difficulty of the applicant.

(2) Use Variances:

- A. The building, structure or land cannot be reasonably used in a manner consistent with the uses allowed in the zoning district in which the property is located.
- B. The condition or situation of the specific piece of property or the intended use of the property is unique to that property and not commonly present in the general vicinity or zoning district. Unique conditions or situations may include exceptional narrowness, shallowness, or shape of the property that existed when the applicable zoning ordinance provision took effect; exceptional topographic conditions or other



extraordinary situation on the land, building, or structure; or the use or development of the property immediately adjoining the property in question; or any other physical situation on the land, building or structure deemed by the Board to be extraordinary.

C. The proposed use, if granted, will not alter the essential character of the neighborhood or the intent of the master plan.

D. The immediate hardship cited as the cause for the variance was not created by any affirmative action by the applicant.

(3) Sign Variance Standards:

Sign variance standards shall continue to be governed by Chapter §1296.31.

~~(2) The mere fact that older, larger signs constructed under prior ordinances exist in the area shall not be sufficient reason to declare hardship or practical difficulty.~~

~~(3) In no case shall a variance be granted if it is determined by the Board that the appellant has created the hardship or practical difficulty.~~

~~(4) Before a variance is granted, it must be shown that the alleged hardships or practical difficulties are exceptional and peculiar to the property of the person requesting a variance and result from conditions which do not generally exist throughout the City.~~

~~(5) The applicant for a variance shall be prepared to furnish documentation to indicate that hardships or practical difficulties do, in fact, exist.~~

~~(6) The term hardship shall not be deemed financial hardship relating to the cost or size of a sign, the fact that a sign has already been erected or the fact that a sign is only available in standard sizes.~~

~~(7) The alleged hardship or practical difficulty which will result from a failure to grant the variance must include substantially more than a mere inconvenience or a mere inability to attain a higher financial return.~~

~~(8) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this Zoning Code, the individual hardships that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.~~

~~(9) Every finding of fact of the Board shall be supported in the record of proceedings of the Board.~~

~~(10) Nothing contained in this section shall be construed to authorize the Board to change the terms of this Zoning Code.~~

~~(d) In exercising its powers, the Board may reverse, affirm wholly or partly or modify the order, requirement, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and, to that end, shall have all of the powers of the person whose decision is being appealed.~~

(e) No order of the Board permitting the erection or alteration of a building shall be valid for longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of the permit. However, where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(f) The concurring vote of a majority of the membership of the Board is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the Board is required to pass under the zoning ordinance, or grant a variance in the zoning ordinance. [MCL 125.3603(2).]

(g) The concurring vote of two-thirds (2/3) of the Board membership (five (5) members) is necessary to effect a variance from uses of land permitted in the Battle Creek Zoning Code as provided in above section 1234.04 (b)(2). [MCL 125.3604(10).]

#### **1234.05 FINALITY OF THE DECISION OF BOARD; APPEAL TO CIRCUIT COURT.**

(a) The decision of the Board shall be final. A party aggrieved by the decision may appeal to the Calhoun County Circuit Court. [MCL 125.3605, MCL 125.3606.] The burden of proof shall be on the appealing party.



(b) The Circuit Court shall review the record and decision to ensure the decision meets all of the following requirements:

(1) Complies with the constitution and laws of the state.

(2) Is based upon proper procedure.

(3) Is supported by competent, material, and substantial evidence on the record.

(4) Represents the reasonable exercise of discretion granted by law to the Board.

(c) If the Circuit Court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented at the hearing before the Board, then the Court shall order further proceedings on conditions the Court considers proper. The Board may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The supplementary record and decision shall be filed with the Court. The Court may affirm, reverse, or modify the decision. The Court may make other orders as justice requires. [MCL 125.3606(2) and (3).]

(d) An appeal from a decision of the Board shall be filed within 30 days after the Board issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the Board if there is no chairperson, or within 21 days after the Board approves the minutes of its decision. [MCL 125.3606 (3).]

## **CHAPTER 1288 NONCONFORMING USES AND STRUCTURES**

### **1288.01 CONTINUANCE; CHANGES.**

The lawful use of a dwelling, building, or structure existing at the time of the adoption of this Zoning Code (Ordinance 36-84, passed December 18, 1984) may be continued, although such use does not conform with this Zoning Code. Such use may be extended throughout the portion of the building that was obviously designed therefor, provided that no structural alteration, except as may be required by law or ordinance, is made therein. If no structural alteration is made, a nonconforming use of a building may be changed to another nonconforming use of the same or a more restricted classification. This section shall apply to nonconforming uses of the land in districts hereafter changed. Whenever a nonconforming use of a building has changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

(Ord. 36-84. Passed 12-18-84.)

1288.07 ACQUISITION BY CITY OF NONCONFORMING USES AND STRUCTURES. The City may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The City Commission may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in the City. Property acquired under this subsection by the City shall not be used for public housing. [MCL 125.3208 (3).]

### 1288.08. ELIMINATION OF NONCONFORMING USES AND STRUCTURES.

The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25. [MCL 125.3208(4).]

### 1288.09 APPEAL TO CIRCUIT COURT.

(a) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, of the City, or the City Commission, made under §1288.01 through §1288.08 of this Ordinance may obtain a review in Calhoun County Circuit Court. The review shall be in accordance with §1234.05. [MCL 125.3607(1).]

(b) Any person required to be given notice under §1232.06(e)(1)(c) of the appeal of any order, determination, or decision made under §1288.01 through §1288.08 shall be a proper party to any action for review under this section. [MCL 125.3607(2).]



#### 1288.10. DECLARATION AND ABATEMENT OF NUISANCE PER SE.

Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted pursuant to the Michigan Zoning Enabling Act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. [MCL 125.3407.]

### **CHAPTER 1289 PLANNED UNIT RESIDENTIAL DEVELOPMENT**

#### **1289.01 PURPOSE; INTENT.**

As used in this section, "planned unit development" includes such terms as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish the objectives of this zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area. —A planned unit residential development (PURD) is intended to provide a means by which land can be developed or redeveloped with innovation and creativity. A planned unit residential development accommodates the objectives of the City of Battle Creek's Comprehensive Plan, while allowing some deviation from the strict application of use and bulk regulations which may otherwise create hardship or complications for development. This chapter is intended to grant such flexibility through the special use permit process of public hearings. The objectives of planned unit residential developments are as follows: [MCL 125.3503(1).]

#### **1289.07 PUBLIC HEARING.**

(a) Public hearings and notice requirements shall comply with the provisions of Act 110207 of the Public Acts of 19212006, as amended, "Michigan Zoning EnablingThe City and Village Zoning Act."

(b) Within ninety days after the submission of an application for tentative approval, a public hearing on said application shall be held by the Planning Commission.

(Ord. 20-00. Passed 11-21-00.)

#### **1289.16 GUARANTEE OF COMPLETION OF IMPROVEMENTS; PERFORMANCE BONDS.**

(a) The City Commission may, as a condition of approval of a planned unit residential development, require a cash bond, certified check, a surety bond, an irrevocable letter of credit, or an escrow fund covering the estimated cost of improvements for the completion of each final approved phase of the development. If a bond is required, it shall be in a form approved by the City Attorney, in a sum of 100 percent of the estimated cost of the work for each phase, and conditioned upon the faithful performance of the work within the time specified. If required, then it shall be deposited at the time of the issuance of the permit authorizing the activity or project. The City may not require the deposit of the performance guarantee until it is prepared to issue the permit. The City shall establish procedures by which a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements shall be made as work progresses. [MCL 125.3505 (1).]

(b) In the case where the landowner shall fail to complete the required public improvement work within such time period as required by the conditions or guarantee as outlined above, the City Commission may proceed to have such work completed and reimburse itself for the cost thereof by



appropriating the cash deposit, certified check or surety bond, or by drawing upon the letter of credit, or escrow fund, or shall take the necessary steps to require performance by the bonding company.

## **CHAPTER 1290 SPECIAL LAND USES**

### **1290.02 APPLICATION FOR SPECIAL USES; CERTIFICATES OF OCCUPANCY.**

An application to build or occupy any of the special uses described in this chapter shall be submitted in accordance with the following procedure:

(a) Applications shall be submitted through the Planning and Community Development Department to the Planning Commission. A copy of the application shall be forwarded to the City Commission. Each application shall be accompanied by a nonrefundable filing fee as established in the Fee, Bond, and Insurance Schedule of two hundred fifty dollars (\$250.00), unless other fees are specified elsewhere.

(b) Every application shall be accompanied by the following information and data:

(1) A special use petition form supplied by the Planning and Community Development Department;

(2) A site plan, plot plan or development plan, drawn to a readable scale, of the total property involved showing the location of all abutting streets, the location of all existing and proposed structures, the types of buildings and their proposed uses;

(3) Preliminary plans and specifications of the proposed development and for all intended construction; and

(4) A statement with supporting evidence regarding the required findings specified in Section 1290.04.

~~—(c)— Before authorization by the City Commission of any of the special uses referred to in this chapter, the Planning Commission shall cause a study and report concerning the effect of the proposed use on the Master Plan and on the character and development of the neighborhood.~~

~~—(d)— The Planning Commission may recommend, and the City Commission may impose, such conditions or restrictions upon the construction, location and operation of a special use as is deemed necessary to secure the general objectives of this Zoning Code and to preserve the value of property in the neighborhood. Any proposed special use shall otherwise comply with all of the requirements set forth in this Zoning Code for the district in which the use is located, except that the City Planning Commission may permit hospitals and institutions to exceed the height limitations of such district.~~

~~—(e)— Certificates of occupancy for special uses shall be valid for a period established by the City Planning Commission or as long as the use is established and maintained in conformity with the plans submitted and approved. Occupancy permits shall expire after one year if the use is not under construction or maintained. For good cause shown and upon written application, the Planning Commission may extend a special use permit for six months.~~  
(Ord. 36-84. Passed 12-18-84.)

### **1290.04 DECISION ON APPLICATION; BASIS FOR DETERMINATION.**

(1) The City Commission may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed. [MCL 125.3502(4).]

(2) Before approving, or approving with conditions, a request for a special land use, the Planning Commission and the City Commission shall establish, beyond a reasonable doubt, that the general standards specified in the following shall be satisfied by the completion and operation of a proposed development:

(a) The use will be harmonious with and in accordance with the general objectives of the Master Plan.

(b) The use will be designed, constructed, operated and maintained so as to be compatible with adjacent uses of land, the natural environment, and harmonious and appropriate in appearance with the existing or intended character of the general vicinity and will not change the essential character of the neighborhood. [MCL 125.3504(2).]



- (c) The use will not be hazardous or disturbing to existing or future neighboring uses.
- (d) The use will be a substantial improvement to property in the immediate vicinity and to the community as a whole.
- (e) The use will be adequately served by essential public facilities and services, such as streets, highways, police and fire protection, drainage, refuse disposal and schools, or the persons or agencies responsible for the development shall be able to adequately provide such services.
- (f) The use will not create excessive additional requirements at public cost for public facilities and services and will not be detrimental to the economic welfare of the community.
- (g) The use will not create activities, processes, materials, equipment or conditions of operation that will be detrimental to any person, property or the general welfare by reason of an excessive generation of traffic, noise, smoke, fumes, glare, vibrations or odors.
- (h) The use will be consistent with the intent and purpose of this Zoning Code.

(Ord. 36-84. Passed 12-18-84.)

#### 1290.05 APPROVAL OF SPECIAL LAND USE WITH CONDITIONS.

- (1) Reasonable conditions may be required with the approval of a special land use. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all the following requirements: [MCL 125.3504(4), (4)(a) through (c).]
  - (a) Be designed to protect the natural resources, the health, safety, and welfare, as well as the social and economic wellbeing, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.
  - (b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.
  - (c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in this zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.
- (2) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the Planning Commission and the landowner. The Planning Commission shall maintain a record of conditions which are changed. [MCL 125.3504(5).]
- (3) To ensure compliance with any conditions imposed pursuant to the section, the City may require that a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the City covering the estimated cost of necessary improvements be deposited with the City Clerk to insure faithful completion of the improvements relative to the imposed conditions. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the special use. The City may not require the deposit of the performance guarantee until it is prepared to issue the permit. The City shall establish procedures by which a rebate of any cash deposits in a reasonable proportion to the ratio of work completed on the required improvements shall be made as work progresses. This subsection shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited under the land division act, 1967 PA 288, MCL 560.101 to 560.293. [MCL 125.3505(1) and (2).]

#### **1290.05 REAPPLICATION.**

- (a) No application for a special use permit shall be submitted for the same property, or any part thereof, or as part of a larger parcel, for a period of six months from the date of Planning Commission ~~decision~~action on a special use application for the property, except on grounds of newly discovered evidence or proof of changed conditions found, in the discretion of the Planning Commission, to be sufficient to justify a reconsideration.



(b) As used in this section, "newly discovered evidence" means a finding that the evidence itself, not merely its materiality, is newly discovered; that the evidence is not cumulative; that the evidence is such as to render a different result probable on rehearing; and that the evidence could not, with reasonable diligence, have been discovered and produced at the time of the original hearing.

(c) For purposes of this section, "proof of changed conditions" shall not include an application for another or different special use than that originally requested.

(Ord. 2-99. Passed 3-2-99.)

## **CHAPTER 1291 AIRPORT ZONING**

### **1291.08 VARIANCES.**

Any person desiring to erect or increase the height of any structure, permit the growth of any tree or use property not in accordance with the regulations prescribed in this chapter may apply to the Zoning Board of Appeals for a variance from such regulations. Such a variance shall be allowed only when it is found that a literal application or enforcement of the regulations will result in practical difficulty/unnecessary hardship and that the relief granted will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice and will be in accordance with the spirit of this chapter. Additionally, no application for such a variance may be considered by the Board unless a copy of the application has been furnished to the Transportation Director of the City for advice as to aeronautical effects of the variance. If the Director does not respond to the application within fifteen days after receipt, the Board may act on its own to grant or deny such variance.

(Ord. 36-84. Passed 12-18-84.)

## **CHAPTER 1292 HOME OCCUPATIONS**

### **1292.02 HOME OCCUPATION DEFINED.**

A home occupation is an activity carried out for gain/consideration by a resident and conducted as an accessory use in the resident's dwelling unit. Consideration shall be defined as some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other. This section does not prohibit the regulation of noise, advertising, traffic, hours of operation, or other conditions that may accompany the use of a residence under this section. [MCL 125.3204.]

(Ord. 36-84. Passed 12-18-84.)

### **1292.03 REGULATIONS; REQUIREMENTS.**

Home occupations engaged in within a Residential District by the resident of a dwelling unit shall comply with all of the following:

(a) Such occupation shall be carried on by one occupant within the principal building, excluding all outdoor activities, with no employees. Examples of such home occupations include, but are not limited to, are hairdressing, millinery, dressmaking, bookkeeping and accounting services, real estate and insurance sales and catalog sales.

## **CHAPTER 1294 SITE PLAN REVIEW**

### ***CROSS REFERENCES***

Approval of plats; street system - see M.C.L.A. Sec. 125.43

Approval or disapproval of plats; procedure; effect - see M.C.L.A. Sec. ~~125.45~~125.3871



Submission of plats - see P. & Z. Ch. 1216

Specifications for plans and plats - see P. & Z. Ch. 1218

### **1294.03 PROJECTS REQUIRING SITE PLAN APPROVAL.**

(a) Site plan approval by the Planning and Community Development Department is required for any proposed new development or expansion of existing developments, including special land uses and planned unit developments, but excluding the following: [MCL 125.3501(3).]

~~(a1)~~ Detached single-family housing;

~~(b2)~~ Two-family dwelling units;

~~(c3)~~ Agricultural uses; and

~~(d4)~~ Developments or uses requiring less than four off-street parking spaces.

(b) If this ordinance requires site plan approval, then the site plan, as approved, shall become part of the record of approval, and subsequent actions relation to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance is agreed to by the landowner and the body or official that initially approved the site plan. [MCL 125.3501(2).]

(Ord. 36-84. Passed 12-18-84.)

### **1294.08 DECISIONS AND APPROVAL.**

(a) A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted City planning documents, other applicable ordinances, and state and federal statutes. (MCL 125.3501(4).]

(b) The site plan shall be approved if it meets all of the requirements of this chapter and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted City planning documents, other applicable ordinances, and state and federal statutes. (MCL 125.3501(5).]

(Ord. 36-84. Passed 12-18-84.)

### **1294.09 APPEALS.**

An appeal may be taken to the Zoning Board of Appeals by any person ~~aggrieved~~affected by a decision of the Planning and Community Development Department, the City Engineer or the Traffic Engineer as it relates to this chapter. Such appeal shall be taken within such time as is prescribed by Section 1234.03.

(Ord. 36-84. Passed 12-18-84.)

## **CHAPTER 1296 SIGNS**

### **~~1296.29~~ APPEALS TO ZONING BOARD OF APPEALS.**

~~— Appeals relating to the type, size and location of signs and the interpretation of this chapter shall be taken to the Zoning Board of Appeals, as set forth in the Zoning Code.~~

~~(Ord. 36-84. Passed 12-18-84.)~~

### **1296.30 ACTION OF ZONING BOARD OF APPEALS.**

The concurring vote of four members of the Zoning Board of Appeals shall be necessary to reverse, wholly or partly, or modify, any order, requirement, decision or determination of the Administrator, to



decide in favor of the applicant upon a matter on which it is required to pass or to effect any variance under this chapter of the ordinance.

(Ord. 36-84. Passed 12-18-84.)

146A Signs 1296.31

### **1296.31 VARIANCES.**

(a) A variance may be granted only when it can be clearly demonstrated by the petitioner that ~~hardship or~~ practical difficulty will in fact exist if such variance is not granted.

(b) The mere fact that other, larger signs constructed under prior sign ordinances do exist in the area shall not be sufficient reason to declare ~~hardship or~~ practical difficulty.

(c) In no case shall a variance be granted if it is determined by the Zoning Board of Appeals that the applicant has created the ~~hardship or~~ practical difficulty.

(d) Before a variance is granted, it must be shown that the ~~alleged hardship or~~ practical difficulty, or both, is exceptional and peculiar to the property of the person requesting the variance, and that it results from conditions that do not exist generally throughout the City.

(e) The applicant for a variance shall furnish a site drawing, photographs and/or any other means of proof to the Board so as to indicate that ~~hardship or~~ practical difficulty does, in fact, exist.

(f) The ~~term hardship~~ phrase "practical difficulty" shall not be deemed financial ~~difficulties~~ ~~hardship~~ relating to the cost of the sign, to the fact that the sign has already been constructed or to the fact that the sign is only available in standard sizes and/or materials (e.g. franchise business signs).

(g) The alleged ~~hardship and~~ practical difficulty, ~~or both,~~ which will result from a failure to grant the variance, must include substantially more than a mere inconvenience or a mere inability to attain higher financial return.

(h) It must be shown that allowing the variance will result in substantial justice being done, considering the public benefits intended to be secured by this chapter, the individual ~~hardships~~ ~~practical difficulties~~ that will be suffered by a failure of the Board to grant a variance and especially the rights of others whose property would be affected by the allowance of the variance.

(i) The findings of fact set forth in this section shall be made by the Board, which is not authorized to grant a variance without finding fact in each of the categories set forth in this section. Every finding of fact shall be supported in the record of the proceedings of the Board.

(j) Nothing contained herein shall be construed to authorize the Board to change the terms of this chapter or to add to the types of signs permitted on any premises.

(Ord. 36-84. Passed 12-18-84.)

### **CHAPTER 1298 FENCES**

#### **1298.11 APPEALS.**

Any person who is ~~directly or aggrieved~~ ~~adversely affected~~ by a decision or order of the Zoning Administrator may appeal, in writing, by petition, to the Zoning Board of Appeals, in accordance with Chapter 1234. [MCL 125.3604(1).]

(Ord. 36-84. Passed 12-18-84.)



1462.09 CHANGE IN AND/OR TRANSFER OF OWNERSHIP OF DWELLING.

(a) Change in Ownership of Dwelling. The City shall immediately issue a new order to repair or correct conditions to any person assuming ownership or the status of responsible party for any dwelling which has been cited in an order to repair or correct conditions. A responsible party who has failed to comply with such an order shall not be relieved of the responsibility of having violated any of the provisions of this Housing Code by transferring title to another person.

(b) Transfer of Ownership. It shall be unlawful for the owner of any dwelling unit or structure who has received a compliance order or upon whom a notice of violation has been served to sell, transfer, mortgage, lease or otherwise dispose of such dwelling unit or structure to another until the provisions of the compliance order or notice of violation have been complied with, or until such owner shall first furnish the grantee, transferee, mortgagee or lessee a true copy of any compliance order or notice of violation issued by the code official and shall furnish to the code official a signed and notarized statement from the grantee, transferee, mortgagee or lessee, acknowledging the receipt of the compliance order or notice of violation and fully accepting the responsibility without condition for making the corrections or repairs required by such compliance order or notice of violation.

(Ord. 19-85. Passed 8-20-85.)